

AS

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-243-W - ORDER NO. 97-785

SEPTEMBER 12, 1997

JMR

IN RE: Application of Carolina Water Service,) ORDER
Inc. for Approval of a Water Supply) APPROVING
Agreement with Lexington County Joint) WATER SUPPLY
Municipal Water and Sewer Commission.) AGREEMENT

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Application for Approval of Water Supply Agreement ("Application") filed by Carolina Water Service, Inc. ("CWS" or "the Company"). The Application requests approval of a Water Supply Agreement ("the Agreement") between CWS and the Lexington County Joint Municipal Water and Sewer Commission ("the Joint Municipal Commission"). The Application was filed pursuant to 26 S.C. Code Ann. Regs. 103-743 (Supp.1996) and Commission Order No. 93-402 (May 11, 1993) issued in Docket No. 91-641-W/S wherein the Commission stated that "all contracts between CWS and bulk water suppliers must be filed with the Commission for its approval." (Order No. 93-402, p. 44)

The Agreement (attached hereto as Attachment 1) was filed with the Commission on May 29, 1997. Thereafter, CWS was instructed to publish a prepared Notice of Filing in newspapers of general circulation in the area affected by the Agreement and to provide a copy of the Notice of Filing to the customers affected

by the Agreement. The Company submitted an Affidavit of Publication and a Certificate of Service to show compliance with the instructions to provide notice of the Agreement. Petitions to Intervene were submitted by the Consumer Advocate for the State of South Carolina ("the Consumer Advocate") and by B. Reed Bull, Jr.

A hearing on the Application was held in the Commission's Hearing Room at 111 Doctors Circle, Columbia, South Carolina, on September 4, 1997, beginning at 2:30 p.m. The Honorable Guy Butler, Chairman, presiding. CWS was represented by Robert T. Bockman, Esquire. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire, and Mr. Bull appeared pro se. Florence P. Belser, Staff Counsel, appeared on behalf of the Commission Staff. CWS presented Carl Daniel and William Bull as witnesses.

Mr. Daniel, Group Vice President for several Utilities, Inc. subsidiaries including CWS, provided an overview of the scope and terms of the Agreement. Mr. Daniel stated that the Agreement will only impact CWS customers in CWS' Lake Murray service area defined as The Landings, Harborside, Land's End, Spences Point, Mallard Shores, Windward Point, and Harbor Place subdivisions. According to Mr. Daniel, the customers in these subdivisions would receive water supplied by the Joint Municipal Commission, and the water would flow into the existing water distribution mains or piping that exists within each subdivision. Mr. Daniel stated that CWS would continue to own and operate the water system, and all customer service, field service, and maintenance support would

continue to be provided by CWS.

Mr. Daniel stated that the Agreement provides that the Joint Municipal Commission will deliver water to CWS with adequate pressure and quantity to meet existing and future needs and further that the quality of the delivered water will meet or exceed all state and federal regulatory requirements. Mr. Daniel offered that the quality of the bulk water from the Joint Municipal Commission should be more aesthetically pleasing since the water is taken from a surface water source which is lower in mineral content than deep water wells.

According to Mr. Daniel, the water rates will increase slightly for customers who receive the bulk water from the Joint Municipal Commission. While the current base water charge of \$8.00 per month will remain unchanged, the total usage charges collected will increase from \$3.24 per 1000 gallons to \$3.75 per 1000 gallons. The record reveals that the \$3.75 represents \$1.85 per 1,000 gallons of usage as a distribution charge (which amount is the approved amount in CWS current rate schedule), \$1.85 per 1,000 gallons of usage as the billing rate which will be forwarded to the Joint Municipal Commission, and \$0.05 per 1,000 gallons of usage to partially offset costs of water used in flushing the lines.

With regard to tap fees, Mr. Daniel stated that within the CWS service area, connection fees will remain unchanged. However, if the Joint Municipal Commission agrees that CWS should be allowed to extend bulk water service outside of the CWS service

area, CWS will collect for the Joint Municipal Commission a connection fee equal to \$600 per single family equivalent for all new connections in addition to the Company's authorized connection (or tap) fees.

Mr. Daniel stated that CWS will retain its existing supply facilities for emergency back-up capacity in the event of failure of the Joint Municipal system. Upon questioning, Mr. Daniel stated that it would be possible to put a lock on the wells to prevent the wells from being used without notice and to avoid the possibility of well water being blended into the system without notice to the Joint Municipal Commission.

Mr. William Bull, General Manager of the Joint Municipal Commission, testified that the Joint Municipal Commission has a sufficient supply of water (or capacity) to serve the CWS service area which is the subject of the Agreement. According to Mr. Wm. Bull, the current capacity from the Lake Murray plant which provides water to the Joint Municipal Commission is 3.5 million gallons of water per day, and the current average daily system demand is approximately 1.5 million gallons per day, leaving approximately 2 million gallons of water per day available for use. Mr. Wm. Bull also stated that the estimated demand from the CWS systems is 225,000 gallons per day.

Upon review of the Agreement and the testimony from the hearing, the Commission finds and concludes that approval of the Agreement is in the public interest. The testimony of record reveals that the bulk water supplied under the Agreement should be

more aesthetically pleasing to the customers since the bulk water will be from a surface water source, rather than well water that is currently utilized by CWS. The Commission finds that the Joint Municipal Commission has a sufficient supply of water to serve the subdivisions which are the subject of the Agreement. Further, the Commission finds that the Agreement contains a safeguard for the customers as the Agreement provides that the billing rate of \$1.85 per 1,000 gallons of water shall remain in effect for a period of at least twelve (12) months from the date water service is initiated by the Commission. The Commission also notes that the customers also have a board of commissioners which must approve any increase in the billing rate and to which the customers can voice their opinions.

IT IS THEREFORE ORDERED THAT:

1. The Water Supply Agreement between CWS and the Joint Municipal Commission for the provision of bulk water to CWS customers in CWS' Lake Murray service area defined as The Landings, Harborside, Land's End, Spences Point, Mallard Shores, Windward Point, and Harbor Place subdivisions (Attachment #1) should be and hereby is approved with the following conditions:

(a) The Commission reserves the issue as to whether or not any expenses or costs associated with maintaining the existing wells should be included in rates until such time as a proceeding is held which addresses the rates charged by CWS. By approving the Agreement, the Commission is not making any finding or determination that the wells are used and useful in providing

water service nor is the Commission approving the wells being maintained.

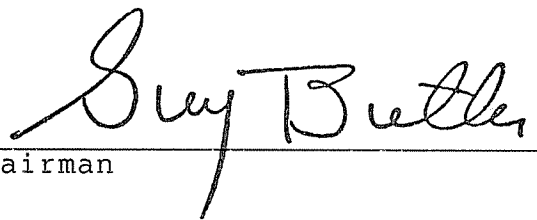
(b) Once interconnection to the bulk water supply is made, locks are to be installed on all wells currently providing water to the customers in the area which is the subject of the Agreement. The locks are to be installed in a manner which will require both CWS and the Joint Municipal Commission to unlock the wells. Further, this Commission is to be notified any time the wells are unlocked.

(c) Additionally, once the interconnection is made and CWS is receiving the bulk water from the Joint Municipal Commission, CWS is to maintain its books and records in a manner which will allow this Commission to determine in an audit the expenses and costs associated with the wells.


2. CWS shall advise the Staff, in writing, when the interconnection is made.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

DISSENTING OPINION OF COMMISSIONER WARREN D. ARTHUR, IV:

I respectfully dissent from the decision of the Commission. My dissent in this matter is based on my continued objection to the \$1.85/1,000 water distribution charge which was approved in Order No. 94-484 dated May 31, 1994, issued in Docket No. 93-738-W/S. The approval of this agreement would allow Carolina Water Service to implement the approved water distribution charge in addition to the base facilities charge and the bulk water charge.

As a member of the panel which heard and ruled on Docket No. 93-738-W/S, I voted against the approval of the \$1.85/1,000 water distribution charge due to a lack of evidence during the proceeding from Carolina Water Service justifying the charge.

My position in this matter is consistent with the recent Tega Cay Utilities, Inc. decision in Docket No. 96-137-W/S in which the panel, of which I was a member, denied any increase in the Commission approved \$1.18/1,000 water distribution charge.



Warren D. Arthur, IV
Commissioner, Sixth District

WATER SUPPLY AGREEMENT

Carolina Water Service, Inc. and Lexington County Joint Municipal Water
and Sewer Commission

LAKE MURRAY AREA WATER SYSTEMS

THIS AGREEMENT, made and entered into on this 20th day of May, 1997, by and between Carolina Water Service, Inc., a Delaware corporation, (hereinafter referred to as "Utility") and Lexington County Joint Municipal Water and Sewer Commission, a tax exempt water and sewer authority licensed by the State of South Carolina, (hereinafter referred to as "Commission").

WITNESSETH

WHEREAS, Utility is engaged in the business of furnishing water service to the public in several subdivisions in an area located in the Lake Murray area, in Lexington County, South Carolina, (hereinafter referred to as the "Service Area") and more fully described on the list attached hereto as Exhibit 1, and

WHEREAS, the Commission has previously allowed Utility to interconnect Utility's water mains with the Commission's water distribution system in Utility's Silvercreek/Rollingwood service area to provide Commission water service to Silvercreek/Rollingwood; and

WHEREAS, the Utility now desires to obtain, and the Commission desires to provide water supply service to customers of Utility within the Service Area, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises which shall be deemed an integral part of this Agreement and of the mutual covenants as hereinafter set forth the parties hereto agree as follows:

Section 1

Purpose

It is the purpose and intent of this Agreement to provide for public water service by Utility, utilizing the Commission's water supply, to all dwelling units within the Service Area and to provide for the timely payment to the Commission by Utility of all costs incurred in the provision of water supply to Utility by the Commission. All terms and conditions contained herein shall be read and interpreted in a manner consistent with and in furtherance of this purpose and intent.

Section 2

Supply Service

1. The Commission shall provide water supply service to Utility under terms and conditions contained in this Agreement. Such service shall be provided through Commission off-site water mains with interconnections to Utility's water distribution systems in the Service Area. Utility will install, at its expense, all bulk meter vaults, meters, backflow preventers and mains to interconnect Utility's distribution systems in the Service Area with the Commission's mains. All meters, meter vaults and backflow preventers shall become the property of the Commission as of the date Commission water service is commenced. Commission will maintain and replace such equipment after the service commencement date. All Commission and Utility construction work shall meet all applicable regulatory standards. The Commission will deliver water to Utility with adequate pressure and quantity to serve existing and future Utility customers, subject to any limitations provided for herein.

2. The Commission shall use its best efforts to provide the necessary water supply capacity needed by Utility to service Utility's customers. Notwithstanding any other provisions contained herein, the Commission shall not be liable for any damages as the result of the inability or failure to provide water services pursuant to this Agreement either on a temporary, emergency, or permanent basis. Further, the Commission will be obligated to provide to Utility water which meets or exceeds all state and federal regulatory requirements, in accordance with provisions of this Agreement.

3. Utility and Commission agree that the following method for billing Utility for water sold to Utility by Commission ("The Billing Method") is acceptable to both parties.

The Billing Method: The Commission will establish an initial Water Supply Charge for the Service Area in the amount of \$1.85 per thousand gallons of water, as registered on the master meters installed hereunder by Utility. Such charge shall remain in effect for a period of at least twelve months from the date water service is initiated by Commission. At the end of each twelve (12) month period the Commission rate will be reviewed by the Commission and adjusted, if necessary, based upon Commission expenses and investment. Utility customers will receive Commission water supply at a rate per thousand gallons equal to the lowest wholesale rate authorized by the Commission for similarly situated bulk rate customers.

4. Commission will bill Utility monthly for all water registered on master meters installed hereunder. In the event that payment is not made to Commission by Utility within 15 days after each Commission monthly billing, Utility agrees to pay interest to the Commission at the rate of one and one-half percent (1 1/2%) per month on the outstanding delinquent amount to the Commission after such 15 day period until said delinquent balance is paid in full. The Commission shall have the right to terminate service if any delinquent balance is not paid within forty-five (45) days of the monthly billing date.

5. In the event the Commission agrees to provide bulk water supply to Utility so that Utility may extend retail water service to new customers outside the Service Area, Utility agrees to collect a Commission connection fee, after service is initiated by the Commission under this Agreement, equal to \$600 per single family equivalent for all new connections outside the Service Area served by Utility and receiving Commission water. It is agreed by both parties hereto that Utility shall continue to collect authorized connection fee as included in its tariff, in addition to the Commission connection fee.

Section 3

South Carolina Public Service Commission (the "PSC") Authorizations

1. The parties acknowledge that the Utility will initially charge its customers \$1.90 per thousand for water supplied by the Commission. The charge will be based on the gallons registered on Utility customer meters and includes \$.05 per thousand gallons to partially reimburse Utility for company used water, for flushing, leaks, etc. The pass-through of the cost of Commission water to Utility customers plus the \$.05 previously mentioned, as well as the terms of this Agreement must be approved by the PSC. The PSC must also approve the implementation of the Utility's \$1.85 per thousand gallons Water Distribution Charge.

2. The Commission agrees to actively participate and cooperate with Utility in securing PSC approval of this Agreement in its entirety.

3. It is understood and agreed by both parties to this Agreement that should the PSC fail to approve the items and terms contained herein-above within twelve (12) months, this Agreement may be immediately terminated by Utility and then neither party shall have any further obligation hereunder.

Section 4

Exclusive Supply Commitment and Exclusive Water Service

Commitment

During the term of this Agreement, as long as Commission is able to meet Utility's water needs, Utility agrees to not utilize alternative water supply sources, including the Utility's existing water supply facilities, to service its customers within subdivisions listed on Exhibit 1. However, Utility may retain its existing supply facilities as an emergency back-up to be used in the event that the Commission cannot provide the necessary and sufficient water supply capacity to meet the service demand requirements of Utility's customers.

Section 5

General Provisions

1. This Agreement shall be executed in two counterparts, each of which will be considered an original. This Agreement is binding upon the successors and assignees of the parties hereto. The provisions of this Agreement constitute the entire terms and provisions of this Agreement between the parties hereto, and no amendment or alteration shall be binding unless the party affected thereby shall have executed a written instrument amending the Agreement. Whenever one party gives notice to the other party concerning any of the provisions of this Agreement, such notice shall be given by certified mail, return receipt required. Said notice shall be deemed given when it is deposited in the United States mail with sufficient postage prepaid (notwithstanding that the return receipt is not subsequently received).

Notices shall be addressed as follows:

LEXINGTON COUNTY JOINT MUNICIPAL WATER AND SEWER COMMISSION

P.O. Box 1966

Lexington, SC 29071

CAROLINA WATER SERVICE INC.

2355 Sanders Road

Northbrook, IL 60062

Attn: James L. Camaren

Chairman & CEO

These addresses may be changed by giving notice as provided for in this paragraph.

2. No waiver of breach of any of the terms of this Agreement shall be construed to be a waiver of any succeeding breach.

3. Utility hereby indemnifies Commission from any liability arising out of the distribution and sale of the Commission supplied water through Utility's mains throughout the Service Area, provided that Commission furnishes potable water to the Utility at the master meter location(s), which meets all regulatory standards, subject to limitations herein.

Section 6

Default

If either party materially fails or defaults in keeping, performing, or abiding by the terms and provisions of this Agreement, then the non-defaulting party shall give written notice to the defaulting party specifying the nature of the default. If the defaulting party does not cure the default within thirty (30) days after the date of written notice, then this Agreement, at the option of the non-defaulting party, shall terminate. Neither party shall be relieved of liability to the other for damages sustained by virtue of any party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any non-defaulting party under South Carolina law, but it is in addition thereto. Notwithstanding the foregoing, any failure to make timely payments shall be considered a material default under the terms of this Agreement without the necessity for any written notice to Utility.

Section 7

Term

1. This Agreement shall have a term of twenty (20) years commencing on the date of water service initiation. This Agreement shall not be considered an obligation on the part of the Commission to perform in any way other than as indicated in this Agreement. The Commission shall not be obligated under the terms of this Agreement to supply additional water for Utility to areas outside the Service Area, unless the Commission issues written notification that it does not object to such additional service, along with any conditions of such service.

2. Should Utility sell to a municipal entity any part or all of the water systems owned within the Service Area during the term of this Agreement, said municipal entity will have the right to terminate this agreement by providing a twelve month notice of cancellation to the Commission. Such termination will only apply to the specific systems purchased from Utility by said municipal entity.

Section 8

Force Majeure

1. If, by reason of force majeure, either party hereto shall be rendered unable, in whole or in part, to carry out its obligations under this Agreement, then, and in that event, said party shall give notice in writing, to the other party, within a reasonable time thereafter, giving the full particulars of such force majeure.

The obligations of the party so affected shall thereupon be suspended and such suspension shall continue during the period in which such inability continues; provided, however, that the disabled party shall endeavor with all reasonable dispatch, to remove or overcome such inability. Provided further, however, that this Section 8 shall not apply to failures by Commission or Utility to make payments or credits for services rendered as specified under Section 2 entitled "Supply Service."

2. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of PSC and courts of this State, orders of any kind of the government of the United States or the State of South Carolina, or any military authority, insurrection, riots, epidemics, landslides, earthquakes, fires, storms, hurricanes, floods, wash-outs, droughts, arrests and restraints of government and people, civil disturbances, explosions, breakage or damage to machinery, canals, tunnels, or pipelines, partial or entire failure of water system, improper operation or failure of the City of West Columbia Water Treatment or Commission facilities, which results in delivery of substandard water quality or pressure to the Commission system, or the inability of Commission to furnish water hereunder or Utility to receive water hereunder for any reason or cause not reasonably within the control of the party claiming such inability.

Section 9

Miscellaneous Provisions

1. In the event the Utility disputes the accuracy of any meter reading, it must notify the Commission within thirty (30) days of billing and request the Commission demonstrate through appropriate calibration testing that the meter is functioning properly in accordance with manufacturers standards and specifications. All meter readings not disputed within thirty (30) days of receipt by Utility are final and not subject to dispute. In the event Utility disputes the billing it shall pay the disputed amount billed by the Commission unless otherwise arranged with Commission for self-evident or obvious errors or mechanical problems. If it is subsequently determined that the billing is in error, then Utility will be reimbursed

for any difference within thirty (30) days of such determination. If it is demonstrated that the Commission's meter is not working properly, the Commission shall be responsible for the cost of testing, repair, or replacement. In the event of any unresolved dispute concerning the meter's performance or accuracy, the parties shall agree to mutually select an independent testing company qualified to perform appropriate tests upon the meter. The decision of this mutually selected testing company as to the meter's performance or accuracy shall be binding upon the parties. In the event the meter is determined to be accurate within the range of tolerance, then the cost of testing shall be paid by Utility. If the meter is determined to be inaccurate and outside the range of tolerances then the Commission shall pay for the cost of testing.

2. The parties hereto agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take other actions as may be reasonably required to carry out the intent of this Agreement.

3. This Agreement shall be binding upon the heirs, representatives and assigns of the parties hereto and the provisions hereof shall constitute covenants running with the land for the benefit of the heirs, representatives and assigns of the party.

4. If this Agreement is not executed prior to May 27, 1997, then the terms and conditions contained herein will be waived, with no further obligation or responsibilities to either party.

5. Utility will submit this Agreement for PSC consideration within ten (10) days after execution by the Commission. Utility will submit plans for construction of the necessary interconnection to the South Carolina Department of Health and Environmental Control ("SC DHEC") within thirty (30) days following PSC approval of this agreement. Utility will commence using Commission water within ninety (90) days following the receipt of a Permit to Construct interconnects from SC DHEC.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands
and seals the date first above written.

LEXINGTON COUNTY JOINT MUNICIPAL
WATER AND SEWER COMMISSION

Attest: Rene Loubach
Attest: Katherine A. Morris

By: William C. Brue
GENERAL MANAGER
MAY 15, 1997

CAROLINA WATER SERVICE, INC.

Attest: [Signature]
Attest: Herbert Seuley

By: [Signature]

EXHIBIT 1

Carolina Water Service, Inc. - Lake Murray
Service Area

The Landings
Harborside
Land's End
Spences Point
Mallard Shores
Windward Point
Harbor Place